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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **30.09.2019**
CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE Mrs.JUSTICE R.THARANI

W.A.(MD).No.981 of 2019
and
C.M.P(MD).Nos.8964 and 9865 of 2019

V.Evethasankara Narayanan ... Appellant/Petitioner

Vs.

The Managing Director,
Tamil Nadu Civil Supplies Corporation
Head Office, No.2, Thambusamy Road,
Kilpauk, Chennai-600 010. ... Respondent/Respondent

PRAYER: Writ Appeal is filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.(MD).No.18245 of 2019 dated 22.08.2019.

Prayer in WP(MD). 18245/ 2019 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To call for the records pertaining to the impugned Notice of the respondent Inviting Tender in MT/9/033000/2019 dated 18.07.2019 published/ uploaded on 19.07.2019 for Appointment of Transport Contractors for Transportation of Commodities from Food Corporation of India Depots (Including Ex-wagon Delivery given by Food Corporation Of India) to Tamil Nadu Civil supplies Corporation Storage points for 32 regions and for Non Food Corporation of india Internal Movement Transportation of Stocks from places other than Food Corporation of India Depots to field points of Tamil Nadu Civil Supplies Corporation for 32 regions for the period from 01.09.2019 tp 31.08.2021 and quash the same as illegal and consequently, direct the respondent to issue Re-Tender to this effect by allowing minimum time of 30 days for submission of Tenders as provided for in Rule 20 of the Tamil Nadu Transparency in Tenders Rules, 2000.

For Appellant : Mr.D.Shanmuga Rajasethupathi

for Mr.A.Iruthayaraj

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JUDGMENT

[Judgment of this Court was made by **T.S.SIVAGNANAM, J.**]

Heard Mr.D.Shanmuga Rajasethupathi, learned counsel appearing for the appellant.

2.This appeal filed by the appellant/writ petitioner is directed against the order passed in W.P.(MD).No.18245 of 2019 dated 22.08.2019.

3.The appellant/writ petitioner challenged the tender notification issued by the respondent Corporation dated 18.07.2019 for appointment of Transport Contractors for Transportation of Commodities from Food Corporation of India Depots to the Tamil Nadu Civil Supplies Corporation Storage points for 32 Regions and for Non Food Corporation of India Internal Movement Transportation of Stocks from places other than Food Corporation of India Depots to field points of Tamil Nadu Civil Supplies Corporation for 32 Regions for the period from 01.09.2019 to 31.08.2021 and further to direct the respondent to issue re-tender to this effect by allowing minimum time of 30 days from submission of tenders, as provided in Rule 20 of the Tamil Nadu Transparency in Tenders Rule, 2000(hereinafter referred as 'the Rules').

4.The said writ petition was dismissed vide the impugned order. The reason assigned by the Writ Court is that the writ petition was filed well after the last date for submitting tender and therefore, the Writ Court was of the opinion that the appellant, being fully aware that the prayer sought for became infructuous, has filed the writ petition and therefore, dismissed the writ petition with cost of Rs.10,000/-.

5.The learned counsel for the appellant submitted that as per the terms and conditions of the tender, the appellant is required to produce the certificate to the effect that he is not an illegal agent. Being aware of such requirements, the appellant applied to the appropriate authority on 19.07.2019 for issuance of such certificate and the said request was not considered and thereafter, another representation was given on 25.07.2019, since no response was received, the petitioner has moved the Writ Court. It is further submitted that in terms of Rule 20(1) of the Rules, the minimum time limit, which is required to be prescribed, is 30 days in respect of tender in excess of Rs.2 crore, whereas, in the tender notification issued by the respondent, the respondent had granted only 19 days instead of 30 days. Therefore, it is submitted that the tender notification should be quashed and the appellant should be permitted to participate in the fresh tender, which should be invited by fixing the time limit prescribed under the Rule.

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6.After we have elaborately heard the learned counsel for the appellant, we find Sub-Rule 2 of Rule 20 of the Rule, states that any reduction in time stipulated, as per the sub-Rule (1) of the Rules has to be specifically authorized by an authority superior to the tender inviting authority for the reason to be recorded in writing. Therefore, the Rule provides for fixing a lesser time limit than what has been stipulated under Rule 20(1) of the Rules. Therefore, we find that the time limit is not mandatory, but, it should be treated as contrary, since the superior authority has been granted power to fix the lesser time limit. Furthermore, we note that the tender was invited for transportation of articles meant for public distribution. Therefore, the respondent Corporation in their wisdom are entitled to take appropriate decision considering the products dealt with by them are perishable in nature. Therefore, we are of the view that the appellant has not made out any grounds to interfere with the tender notification dated 18.07.2019.

7.With regard to the imposition of cost is concerned, we find that the appellant is a regular Transport Contractor of the respondent Corporation, as could be seen from the experience and performance certificates issued by the Warehouse Manager, Tamil Nadu Warehousing Corporation, Kallakurichi, the Deputy Collector/Regional Manager, TNCSC, Madurai, the Deputy Collector/Regional Manager, TNCSC, Madurai Region, dated 28.6.019, 23.08.2019 and 27.08.2018 respectively. Considering this fact, we are of the view that the cost need not be imposed on the appellant, which was imposed by the Writ Court in the impugned order.

8.In the light of the above, the writ appeal is partly allowed and the order passed by the learned writ Court in dismissing the writ petition is confirmed. However, for the reason assigned by us supra, the imposition of cost stands deleted. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

The Managing Director,
Tamil Nadu Civil Supplies Corporation
Head Office, No.2, Thambusamy Road,
Kilpauk, Chennai - 600 010.

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+1 CC to Mr.D. SHANMUGARAJA SETHUOATHI, Advocate (SR-90752[F] dated 01/10/2019)

ORDER MADE IN
W.A.(MD).No.981 of 2019
and
C.M.P(MD).Nos.8964 and 9865 of 2019
30.09.2019

ns
MK (25.10.2019) 4P 3C

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